

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILLIP L. DICK

Plaintiff,

v.

STEPHEN COCKLIN CLARK COUNTY
VANCOUVER POLICE OFFICER,

Defendant.

Case No. C07-5370FDB

SECOND ORDER DIRECTING
SERVICE BY U.S. MARSHAL

This action, brought under 42 U.S.C. 1983, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. The court previously attempted to serve Clark County and the defendant with service of process in this action. A September 11, 2007 letter from the Clark County Prosecutor's Office informs the court that the defendant in this action is not a county employee, but, he may be a city police officer.

The court will attempt to serve the defendant by mail a second time. The court has filled out

1 a Marshal Service Form for plaintiff. The court will attempt to serve defendant Cocklin at the
2 Vancouver City Police Headquarters, 605 East Evergreen Boulevard, Vancouver WA 98661. A
3 courtesy copy of the complaint will be sent to the Assistant City Attorney, Terry M. Weiner at
4 Vancouver City Hall 210 E.13th Street, Vancouver WA 98663.

5 The clerk is directed to effect service as provided below.

6 (1) Service by United States Marshal.

7 It is hereby ORDERED that the United States Marshal shall send the following to each
8 named defendant for whom there is a filled out service form by first class mail: a copy of the
9 complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service
10 of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to
11 the Clerk's Office. All costs of service shall be advanced by the United States. The Clerk shall
12 assemble the necessary documents to effect service.

13 (2) Response Required

14 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service
15 of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after
16 the date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the
17 complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

18 Any defendant who fails to timely return the signed Waiver will be personally served with a
19 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule
20 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under
21 Rule 12 within **thirty (30) days** after service.

22 (3) Filing and Service by Parties, Generally.

23 All original documents and papers submitted for consideration by the court in this case, are to
24 be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-
25 hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The papers
26 shall be accompanied by proof that such documents have been served upon counsel for the opposing
27 party (or upon any party acting *pro se*). The proof shall show the day and manner of service and

1 may be written acknowledgment of service, by certificate of a member of the bar of this court, or by
2 affidavit of the person who served the papers.

3 (4) Motions.

4 Any request for court action shall be set forth in a motion, properly filed and served. The
5 motion shall include in its caption (immediately below the title of the motion) a designation of the
6 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third
7 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs
8 and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the
9 Monday immediately preceding the Friday appointed for consideration of the motion. If a party fails
10 to file and serve timely opposition to a motion, the court may deem any opposition to be without
11 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday immediately
12 preceding the Friday designated for consideration of the motion, a response to the opposing party's
13 briefs and affidavits.

14 (5) Motions for Summary Judgment

15 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil
16 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a
17 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary
18 judgment if the moving party has shown the absence of issues of material fact and an entitlement to
19 judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials
20 of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the
21 nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine
22 issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present
23 counter evidence could result in the Court accepting the moving party's evidence as the truth, and
24 entering final judgment in favor of the moving party without a full trial. Rand v. Rowland, 113 F.3d
25 1520 (9th Cir. 1997).

26 (6) Direct Communications with District Judge or Magistrate Judge

27 No direct communication is to take place with the District Judge or Magistrate Judge with
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1 regard to this case. All relevant information and papers are to be directed to the Clerk.

2 (7) Clerk's Action

3 The Clerk is directed to send a copy of this Order and of the General Order issued by the
4 Magistrate Judges to plaintiff.

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6 DATED this 7 day of December, 2007.

7
8 /S/ J. Kelley Arnold
9 J. Kelley Arnold
United States Magistrate Judge